

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BROOKLYN COMMUNITY MANAGEMENT LLC,
GROSS HEALTH CARE INC and SUMNER PLACE
LLC, d/b/a SUMNER HEALTH CARE PROVIDERS,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,
et al.,

Defendants.
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08 Civ. 00168 (BSJ)

**DECLARATION OF
THOMAS HAMEL**

THOMAS HAMEL declares under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am Bureau Chief of the New York State Department of Education's ("SED") Rate Setting Unit. In that capacity, I am responsible for setting reimbursement rates for approved private providers of special education services. I am, therefore, personally aware of what SED does and is responsible for, and, most important for purposes of this declaration, what SED does not do and is not responsible for, in the process of assuring that children with disabilities get special education services or related services. I submit this declaration in opposition to plaintiffs' motion for a preliminary injunction.

2. As I understand it, plaintiffs provide school-age and pre-school students in New York City with what are known as "related services," a term defined in § 1402(22) of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, et seq. "Related services" must be distinguished from "special education," defined in § 1401(25). SED's involvement with "special education" is much more extensive than its involvement with "related services."

3. SED sets approved tuition rates for approved private special education services providers serving school-aged students, and approves providers. When local educational authorities pay approved private providers for special education services, SED reimburses the local educational agency based on the tuition rates set by SED.

4. With related services provided to school-ages students, by contrast, SED neither sets rates, approves providers, nor contracts with providers for such related services.

5. SED sets approved tuition rates for approved private special education services providers serving pre-school students, and approves providers. When local educational authorities pay approved private providers for special education services, SED reimburses the local educational agency based on the tuition rates approved by SED.

6. With related services provided to pre-school students, by contrast, SED neither sets rates, approves providers, nor contracts with providers for such related services. SED does review and approve rates for related services to pre-school students.

7. As I understand it, plaintiffs seek reimbursement from the New York City Department of Education for related services already provided the New York City school-aged and pre-school children, and seek to be allowed to continue providing related services. Both of these issues are the responsibility of the local educational authority, not SED. SED does not itself reimburse private providers of related services, determine what private related service providers should be paid, contract with, or decide which private related service providers shall be permitted to do business with local educational authorities.

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WHEREFORE, plaintiffs' motion for a preliminary injunction should be denied.

Dated: Albany, New York
January 17, 2008


THOMAS HAMEL

08 Civ. 00168 (BSJ)(HBP)

E.C.F.

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**DECLARATION OF
THOMAS HAMEL**

ANDREW M. CUOMO
Attorney General of the State of
New York

ATTORNEY FOR
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Due Service of a copy of the within is admitted this

_____ day of _____ 2008